

THE HISTORY OF THE INDIANA TRIAL COURT SYSTEM AND ATTEMPTS AT RENOVATION

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INTRODUCTION

Since the formation of Indiana as a territory to the present day, advocates of reform of Indiana's trial court system have enjoyed only limited and short-lived success. Throughout Indiana's history, advocates have addressed a number of issues; however, their goal of a single tier organization of trial courts and merit selection of all judges has proved elusive. This Article evaluates the history of the Indiana General Assembly's attempts to address the call for a more organized trial court system and judge selection process in Indiana. This history shows the general assembly's ambivalence in forgoing its control over parochial issues and its recalcitrance in surrendering control over not only the various dockets of the Indiana trial courts, but over the people who administer those dockets—the state's trial judges.

As recently as 1986, the Indiana Judges Association advocated a series of reforms for the state's judicial system.¹ This proposal contained a number of changes which required legislative approval, but some required action only within the judicial branch itself. The 1986 proposal was based, in part, on the recommendations advanced by the Indiana Judges Association in 1978.² Specifically, the most recent suggestions championed were: 1) a unified, single-tier jurisdiction system of trial courts, 2) selection of all judges by a merit selection system, 3) total state funding of the court system, 4) improved judicial salaries, 5) improved court record keeping, and 6) reexamination of the change of venue and change of judge rules.³

Although attempts to address all these proposals collectively met with initial approval by an interim legislative study committee, the proposal was withdrawn prior to its arrival before the general assembly.⁴ Not to be deterred, the judges who advocated reform acted internally when they could and have enjoyed a significant degree of success. The Indiana Supreme Court addressed change of venue and change of judge requirements by taking steps to curtail a litigant's

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1. INDIANA JUDGES ASS'N, A PROPOSAL FOR REFORM OF THE INDIANA TRIAL COURT SYSTEM (1986) [hereinafter PROPOSAL].

2. INDIANA JUDGES ASS'N, THE INDIANA TRIAL COURT SYSTEM: RECOMMENDED IMPROVEMENTS (1978).

3. PROPOSAL, *supra* note 1.

4. INDIANA SENATE JOURNAL, 106th Gen. Ass'y, 1st Reg. Sess. 291 (Ind. 1989) (S. 12, 106th Gen. Ass'y withdrawn from consideration).

ability to forum shop.⁵ Coupled with the court's eventual usage of tools legislatively granted or inherently authorized by the constitution,⁶ the supreme court has begun to assume a leadership role in helping the judiciary manage its own inventory of cases. For example, as authorized by statute,⁷ the supreme court has created trial court districts to improve the allocation of judicial resources. Further, recent amendments to the Indiana Trial Rules and Indiana Appellate Rules have demonstrated that the court is willing to address management of the cases in Indiana courts by modernizing the record keeping system throughout the state⁸ and by providing rules requiring trial courts to cooperate and work together in the selection of special judges.⁹

Other than state funding of the trial courts, which is not addressed in this analysis, the only remaining issues that have gone unattended are: 1) the organization of the trial court system and 2) the selection of trial court judges.

I. NATIONAL TRENDS IN TRIAL COURT STRUCTURE

Indiana's current judicial system is comprised of three tiers: 1) various trial courts—including small claims, town, city, county, probate, superior, and circuit—all with varying jurisdictions, 2) an intermediate court of appeals and a tax court, and 3) a supreme court.¹⁰ The problems of Indiana's multi-tiered trial court system include the local financing of courts,¹¹ which results in inadequate funding for some courts. These courts must then depend upon judicial mandates in order to function. In addition, some courts suffer from overcrowded dockets, while other courts function only part-time due to their lighter caseload. The best-qualified judges do not always remain in office because an uninformed electorate

5. The supreme court has adopted the following court rules: IND. CRIM. R. 12 (limiting change of venue in criminal cases); IND. CRIM. R. 2.2 (requiring trial courts to develop plan for non-discretionary assignment of all felony and misdemeanor cases filed in the county); *see* Tyson v. State, 619 N.E.2d 276, 300 n.33 (Ind. Ct. App. 1993) (The current system allows prosecutors to choose which judge will hear a case in Marion County because cases are assigned sequentially to the six Marion County criminal division judges in blocks of fifty cases. Thus, it is possible for a prosecutor to find out when cases are being assigned to a certain judge and file the information accordingly.); IND. TR. R. 76 (limiting change of venue in civil cases).

6. IND. CONST. art. VII, § 1. *See also* Heath v. Fennig, 40 N.E.2d 329 (Ind. 1942) (recognizing court's inherent power to regulate judicial matters); Tucker v. State, 35 N.E.2d 270 (Ind. 1941).

7. IND. CODE § 33-2.1-7-8 (1993) (authorizing supreme court to make districts and transfer judges).

8. IND. TR. R. 77 (requiring the clerk of the circuit court to maintain a chronological case summary and a record of judgments and orders book in all cases).

9. IND. TR. R. 79.

10. *See infra*, Appendix.

11. Trial courts are primarily funded by the individual counties. DIVISION OF STATE COURT ADMIN., SUPREME COURT OF INDIANA, INDIANA JUDICIAL REPORT 89-91 (1992) (report showing allocation of revenues).

can vote to remove them. Although Indiana is afflicted with a multiplicity of courts at the trial court level, the national trend has been to unify the courts by moving to a single-tier system.¹²

The benefits to be derived from court unification are legion. They include a reduction of overlapping and fragmented jurisdiction among the trial courts, better deployment and use of judges and support staff, elimination of conflicting local court rules and establishment of uniformity of process, more expeditious trial and appellate processes, greater uniformity in procedures, and better access to records and equipment to facilitate case management and reduce costs.¹³

The national trend toward unification began with Dean Roscoe Pound who set forth four “controlling ideas” as the basis of the unified court system: unification, flexibility, conservation of judicial power, and responsibility.¹⁴ More specifically:

The characteristics of a unified court system are a single structured court divided into two or three levels or branches, one to handle the appellate business and one or two for trial work. The business and personnel affairs of the system are usually managed by a chief justice assisted by an administrative director and staff. The power to make procedural and administrative rules is vested in the supreme court. Tribunals which hear limited jurisdiction cases are a part of the whole working scheme and enjoy a dignified status.¹⁵

Adopting a unified court system would eliminate the multiplicity of courts at the trial level. Those who support the unified system contend that courts of limited jurisdiction were necessary at a time in American judicial history when laymen were forced to hear and decide cases because of the lack of people trained and educated in the law. Such laymen were limited to hearing cases involving misdemeanors or civil claims of less than a specified amount. A disgruntled party in these inferior courts appealed to the trial court of general jurisdiction, where the case was tried de novo.¹⁶

The trend toward unification that originated with Pound continued with the “Vanderbilt-Parker” guidelines on judicial administration. These consisted initially of recommendations by committees of the ABA Section of Judicial Administration, under the leadership of Chief Judge John J. Parker, which were adopted by the House of Delegates of the American Bar Association in 1938. These recommendations were augmented and elaborated upon by standards adopted by the Section of Judicial Administration as a result of efforts led by

12. PROPOSAL, *supra* note 1, at 1.

13. *Id.*

14. Roscoe Pound, *Principles and Outline of a Modern Unified Court Organization*, 23 JUDICATURE 225 (1940).

15. R. Stanley Lowe, *Unified Courts in America: The Legacy of Roscoe Pound*, 56 JUDICATURE 316, 318 (1973).

16. Lyle H. Truax, *Courts of Limited Jurisdiction are Passé*, 53 JUDICATURE 326, 326 (1970).

Chief Justice Arthur T. Vanderbilt of New Jersey.¹⁷

Thereafter, movement toward unification was advanced by the American Judicature Society and the American Bar Association, the latter having merged its recommendations for trial court organization and judicial selection into one proposal. The American Judicature Society played an active role in the partial adoption of merit selection in Indiana in 1970 and its retention in Lake, St. Joseph and Allen Counties as well as the municipal courts in Marion County.¹⁸ The American Bar Association advocated the following standards which were approved in 1974 and amended in 1990:

Section 1.12 Trial Court. The trial court should be organized as a single level court.

(a) Jurisdiction and procedure. The trial court should have jurisdiction of all adjudicative proceedings, except appeals and matters in which original jurisdiction is vested in an administrative board or agency. . . .

. . . .

(b) Judges and judicial officers. The trial court should have a single class of judges, selected as provided in Section 1.21. To assist the judges, the court should have a convenient number of judicial officers performing such functions as conducting preliminary and interlocutory hearings in criminal and civil cases, presiding over disputed discovery proceedings, receiving testimony as referee or master, and hearing short causes and motions, all of which are subject to judicial approval. The judicial officers should be selected as provided in Section 1.26. . . .

. . . .

Section 1.21 Selection of Judges. Persons should be selected as judges on the basis of their personal and professional qualifications for judicial office. Their concept of judicial office and views as to the role of the judiciary may be pertinent to their qualification as judges, but selection should not be made on the basis of partisan affiliation.

(b) Procedure for selecting judges. Judges should be selected through a procedure in which for each judicial vacancy as it occurs (including the creation of a new judicial office) a judicial nominating commission nominates at least three qualified candidates, of whom the governor appoints one to office.¹⁹

17. See ARTHUR T. VANDERBILT, *MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION* (1949).

18. See generally SARIS S. ESCOVITZ ET AL., *AMERICAN JUDICATURE SOC'Y, JUDICIAL SELECTION AND TENURE* (1975).

19. JUDICIAL ADMIN. DIV., A.B.A., *STANDARDS RELATING TO COURT ORGANIZATION* 18-

The American Bar Association's position on merit selection as advanced in Section 1.21 was initially endorsed by the American Bar Association in 1937 and became known as the "Kales, Missouri, merit or commission plan for judicial selection."²⁰ Thirty-four jurisdictions, including Indiana,²¹ have since adopted the merit selection plan for selection of some of their judges.²² The American Judicature Society has similarly promoted the adoption of the merit selection plan for judicial selection²³ and has served as a prime mover in Indiana's initial foray into usage of merit selection on a limited basis and in protecting the progress already made.²⁴

In order to assess the likelihood of a successful campaign for change, one must become familiar with the paths that trial court organization and judicial selection have traveled since Indiana became a territory. By examining some of the successes that advocates of reform have attained in the past, one may be able to foretell some of the ingredients necessary for future reforms. Logically, such a trek through the history of the Hoosier judiciary must begin with the origins and initial modifications of the trial court structure and judicial selection methods. This journey will not only chronicle the changes our legislature has made, but it will also demonstrate a reluctance on the legislature's part to relinquish its control over the forums available to litigants on the local level and the judges themselves.

II. THE STRUCTURAL TRANSFORMATION OF INDIANA'S TRIAL COURT SYSTEM

A. *Territorial Development (Pre-1816)*

Indiana, which was carved out of the vast wilderness surrendered to the United States after the Peace of Paris in 1783, finds its direct lineage from the area north and west of the Ohio River in what was to become known as the Northwest Territory. The makeup of the territorial judiciary was dictated by sections three through five of "An Ordinance for the Government of the Territory

19, 47 (1990).

20. JOANNE MARTIN, MERIT SELECTION COMMISSIONS: WHAT DO THEY DO? HOW EFFECTIVE ARE THEY? 3 (1993).

21. IND. CONST. art. VII, §§ 9-10. Lake, St. Joseph, and Allen Counties also use merit selection for selecting judges. IND. CODE §§ 33-5-29.5-36 (Supp. 1996) (Lake County); 33-5-40-4 (Supp. 1996) (St. Joseph County); 33-5-5.1-38.1 (1993) (Allen County).

22. See MARTIN, *supra* note 20, at 1.

23. ESCOVITZ ET AL., *supra* note 18.

24. Representatives of the American Judicature Society appeared and testified before both the House Judiciary and House Ways and Means Committees when those bodies were considering a proposal to eliminate the merit selection process in Lake and St. Joseph Counties as contained in Senate Bill 116 in the 1994 General Assembly. Although the House rejected the American Judicature Society's suggestions, the Senate refused to concur in the House's proposed amendments, and the bill expired on the last day of the General Assembly, March 4, 1994. INDIANA SENATE JOURNAL, 108th General Ass'y, 2nd Reg. Session 222, 240, 449 (Ind. 1994).

of the United States North-West of the Ohio River,” which stated in pertinent part:

There shall also be appointed a court to consist of three judges any two of whom to form a court, who shall have a common law jurisdiction and reside in the district and have each therein a freehold estate in five hundred acres of land while in the exercise of their offices, and their commission shall continue in force during good behaviour.

The governor, and judges or a majority of them shall adopt and publish in the district such laws of the original states criminal and civil as may be necessary and best suited to the circumstances of the district and report them to Congress from time to time, which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards the legislature shall have authority to alter them as they shall think fit.²⁵

Thus, the original judiciary of the territory which later became the State of Indiana possessed both judicial and legislative responsibilities. The Northwest Ordinance provided for various stages of territorial government. During the first stage, Governor St. Clair created several large counties and located seats of government close to the centers of population for “the prevention of crimes and the administration of justice.”²⁶ At that time, the governor, a secretary, and the three judges comprised the governmental structure of the Northwest Territory.²⁷

The legislative responsibilities entrusted to the governor and members of the judiciary were limited in that the governor and judges were required to select laws only from those which had been approved by the original states and that selection was subject to the disapproval of the federal Congress. Feeling “severely restricted by this requirement, St. Clair and the judges— Samuel Parsons, James Varnum, and John Symmes—agreed among themselves to modify the laws of other states and add new laws to fit the frontier conditions, so long as the laws remained true to the Constitution and republican principles.”²⁸ These new laws of the Northwest Territory “blended English common law, colonial practice, Puritan punishments . . . and frontier expediency.”²⁹ One of the first new laws enacted set up a territorial court system and enumerated a list of crimes and punishments.³⁰

The first courts of the Northwest Territory were created by an act of the original Congress on August 23, 1788, before the adoption of the Federal Constitution in 1789.³¹ The highest trial court in the territory was the general or

25. THE NORTHWEST ORDINANCE, 1787, A BICENTENNIAL HANDBOOK 36 (Robert M. Taylor, Jr. ed., 1987) [hereinafter HANDBOOK].

26. *Id.*

27. *Id.*

28. *Id.* at 38.

29. *Id.*

30. *Id.*

31. 1 LEANDER J. MONKS, COURTS AND LAWYERS OF INDIANA 4-5 (1916).

territorial court.³² This court, which could be held by all members sitting together or by one alone,³³ met annually at Marietta (Ohio), Cincinnati, Detroit, Vincennes (Indiana), and Kaskaskia (Illinois).³⁴

It [the General Court] was a Common Law tribunal without chancery powers. It had original as well as appellate jurisdiction in all civil and criminal cases. In capital and divorce cases, it possessed exclusive jurisdiction. . . . It could revise and reverse the decisions of all courts below it, even though one of its own justices had presided. Even the Supreme Court of the United States could not review the decisions.³⁵

Also in existence at this time were the county courts of common pleas and the general courts of quarter sessions of the peace. These courts were the highest of the local courts. The quarter sessions courts, which were of equal rank with the courts of common pleas, usually shared the same justices.³⁶ These courts had jurisdiction over petty crimes and misdemeanors, such as gambling, provocation, assault and battery, and drunkenness.

The court of common pleas was “a civil court, having jurisdiction over civil pleas between citizens of the same county.”³⁷ The court met two times per year in each county where the quarter session court sat. Three common pleas justices usually sat together.³⁸ Every final decree rendered by the court was appealable to the general court of the territory.³⁹

By 1788, the governor and the three judge administration of the Northwest Territory recognized a need to control small claims; therefore, they established justice of the peace courts.⁴⁰ These justice of the peace courts were granted jurisdiction to hear and determine all cases involving debts of five dollars or less.⁴¹ The judges also set up a coroner’s court in which it was the duty of the coroner to inquire about sudden deaths or deaths occurring in prison.⁴²

In 1795, after the creation of the first courts of the Northwest Territory, legislation adopted from the Pennsylvania Code re-established the court system to include a general court, a circuit court, and a court of general quarter sessions.⁴³ This general court of the territory, also known as the supreme court,

32. 1 *id.* at 5; see THE LAWS OF THE NORTHWEST TERRITORY, 1788-1800, at 11 (Theodore C. Pease ed., 1925) [hereinafter LAWS].

33. 1 MONKS, *supra* note 31, at 5.

34. 1 *id.*

35. 1 *id.* at 6-7.

36. 1 *id.* at 14; see LAWS, *supra* note 32, at 4-7.

37. 1 MONKS, *supra* note 31, at 14; see also LAWS, *supra* note 32, at 7-8.

38. 1 MONKS, *supra* note 31, at 14.

39. LAWS, *supra* note 32, at 9.

40. ROBERT G. WHITINGER, INDIANA SMALL CLAIMS 2 (1980); LAWS, *supra* note 32, at 4.

41. WHITINGER, *supra* note 40, at 2.

42. LAWS, *supra* note 32, at 24-25.

43. *Id.* at 154-60.

met twice each year.⁴⁴ The judges of the general court had the power to issue writs of habeas corpus, certiorari, error, and other remedial writs all of which were returnable to the general court for appeal.⁴⁵

The circuit court, which was an intermediate court between the quarter sessions courts and the supreme court, was established in St. Clair and Knox counties and met twice a year in those counties.⁴⁶ The circuit court could only be presided over by one or more of the territorial judges.⁴⁷

The courts of general quarter sessions, in which three justices usually sat together, met in Daviess, Hamilton, St. Clair, and Knox Counties.⁴⁸ All cases tried in the quarter sessions could be appealed by a common writ of error to the general court.⁴⁹

Also adopted from the Pennsylvania Code in 1795 was the orphans' court.⁵⁰ The orphans' court had jurisdiction over every person who as guardian, trustee, tutor, executor, or administrator, was entrusted or accountable for any land, tenements, goods, chattels or estates belonging to any orphan or person under age.⁵¹ Originally, the business of the orphans' court was transacted by the probate judge.⁵² However, the law creating the orphans' court directed the justices of the court of quarter sessions to transact the business of the orphans' court during the same week as the court of quarter sessions and at the same place.⁵³ All cases tried in the orphans' court could be appealed to the general or circuit courts.⁵⁴

In 1795, the justices of the peace were given county-wide jurisdiction, which was exclusive and without appeal, in all debt cases in which the disputed amount did not exceed five dollars. In addition, they were given concurrent county-wide jurisdiction with the common pleas court, for which appeal was allotted to the common pleas court, in cases where the amount in controversy was between five dollars and twelve dollars.⁵⁵ On appeal, these cases were tried de novo.⁵⁶ By 1798, a law adopted from the Massachusetts Code vested the justices of the peace with certain powers in minor criminal matters.⁵⁷

In 1799, the second stage of territorial development began.⁵⁸ On September

44. *Id.* at 156.

45. 1 MONKS, *supra* note 31, at 26.

46. 1 *id.* at 27; LAWS, *supra* note 32, at 157.

47. LAWS, *supra* note 32, at 157.

48. *Id.* at 154.

49. *Id.* at 156.

50. *Id.* at 181.

51. *Id.* at 182.

52. 1 MONKS, *supra* note 31, at 33.

53. 1 *id.* at 34.

54. LAWS, *supra* note 32, at 185-186.

55. WHITINGER, *supra* note 40, at 2-3; LAWS, *supra* note 32, at 143-149; 1 MONKS, *supra* note 31, at 31.

56. 1 MONKS, *supra* note 31, at 31.

57. LAWS, *supra* note 32, at 297-98.

58. HANDBOOK, *supra* note 25, at 48. "When the free male population, age twenty-one and

25, 1799, the first legislature of the Northwest Territory convened in Cincinnati, Ohio⁵⁹ and adopted an act establishing small claims courts in which the justices were divested of their executive powers, and their jurisdiction was reduced and made co-extensive with the township in which their court sat. In addition, new courts were established in those townships which, because of the contraction of power, were without judicial service.⁶⁰

In January of 1801, the first legislative body that met in Indiana included Governor Harrison and three judges.⁶¹ The chief purpose of this first meeting of the legislature was to establish courts and determine their jurisdiction.⁶² For this purpose, the legislature selected a law from the Pennsylvania Code.⁶³ In fact, it was essentially the same law that had been adopted by the Northwest Territory on June 6, 1795.

In 1805, one of the first acts of the legislature was the general consolidation of the local county courts.⁶⁴ The quarter sessions, common pleas, probate, and orphans' courts were all consolidated into one county court under the name of common pleas.⁶⁵ The governor was required to appoint three judges for each county court, a majority of whom were required to hold court.⁶⁶

On March 3, 1805, the U.S. Congress granted chancery power to the Territorial Supreme Court and also provided a right of appeal from its decisions to the U.S. Supreme Court in cases in which the United States had an interest.⁶⁷ After Congress cloaked these territorial judges with equity powers, the first legislature of the territory "lost little time" in establishing its own chancery court on August 22, 1805.⁶⁸ That court consisted of one judge, to be appointed by the governor of the territory, who was required to hold at least two sessions annually in Vincennes.⁶⁹

In an effort "to balance the caseloads and prevent abuses of the system which were possible due to distances which had to be traveled on horseback or by wagon," the second act of the First Indiana Legislature in 1806 imposed venue requirements on small claims litigation and increased the jurisdictional amount

older, reached 5000, the territory could advance to the second, or semi-representative, stage of government."

59. *Id.* at 91-92.

60. WHITINGER, *supra* note 40, at 3; LAWS, *supra* note 32, at 389-401.

61. 1 MONKS, *supra* note 31, at 24.

62. 1 *id.* at 25.

63. THE LAWS OF THE INDIANA TERRITORY, 1801-1806, at 1801-14 (Indiana, Throop & Clark 1886).

64. *Id.* at 1805-38 to 1805-41; 1 MONKS, *supra* note 31, at 40.

65. 1 MONKS, *supra* note 31, at 40.

66. 1 *id.*

67. 1 *id.* at 38.

68. 1 *id.*; THE LAWS OF THE INDIANA TERRITORY, 1801-1806, *supra* note 63, at 1805-29 to 1805-33.

69. 1 MONKS, *supra* note 31, at 38.

to eighteen dollars.⁷⁰

In 1813, the legislature passed an act reorganizing the courts of justice by abolishing the court of common pleas and circuit courts and establishing new circuit courts in their place.⁷¹ The circuit court for each circuit was to hold three sessions in each county annually. Judgments from the justice of the peace were appealable to the circuit courts,⁷² and any appeal from the circuit court was taken to the general court.⁷³

This act of reorganizing the court system into three tiers was short-lived—it was repealed on September 10, 1814.⁷⁴ However, in that same year, the legislature approved a bill establishing circuit courts once again.⁷⁵ Three circuits were established, each to be presided over by a circuit judge appointed and commissioned by the governor.⁷⁶ Additionally, each county in the circuit was allotted two associate judges to be appointed in the same manner and to assist in holding court.⁷⁷ The circuit judge and at least one associate judge were required to sit together to try any criminal offense, the punishment for which involved life, limb or imprisonment for two years or more.⁷⁸

In 1815, the legislature gave the justices of the peace courts concurrent jurisdiction with the circuit courts in the Northwest Territory in all contract actions where the amount in controversy did not exceed forty dollars, in trespass actions where the amount in controversy did not exceed twenty dollars, in rent actions where the amount did not exceed thirty dollars, and in trover and conversion cases not exceeding twenty dollars.⁷⁹ Thus, by the time Indiana was ready to seek admission to the Union, it had already gone through numerous transformations of its court system and had settled on a three-tier system which consisted of the: 1) justice of the peace courts which handled minor civil and criminal matters, 2) circuit courts which were the courts of general jurisdiction, and 3) a general court which acted as an appellate tribunal.

B. Early Statehood (1816-1850)

On April 19, 1816, Congress passed an enabling act entitled: “An Act to enable the people of the Indiana Territory to form a constitution and state government, and for the admission of such state into the Union on an equal

70. WHITINGER, *supra* note 40, at 3-4; THE LAWS OF THE INDIANA TERRITORY, 1801-1806, *supra* note 63, at 1806-xx.

71. THE LAWS OF THE INDIANA TERRITORY, 1809-1816, at 474-475 (Louis B. Ewbank & Dorothy L. Riker eds., 1934).

72. *Id.* at 478.

73. *Id.*

74. *Id.* at 562-65.

75. *Id.* at 517-22.

76. *Id.* at 517-19.

77. *Id.* at 518.

78. *Id.*

79. *Id.* at 627.

footing with the original States.”⁸⁰ On June 10, 1816, the representatives of the territory of Indiana held a constitutional convention in Corydon and officially accepted the enabling act.⁸¹ On December 11, 1816, Congress passed a resolution admitting Indiana into the Union as a state.⁸²

Article V of the 1816 Constitution established Indiana’s first judiciary which consisted of one supreme court, three circuit courts, and inferior courts that the legislature may establish.⁸³ The 1816 Constitution also provided for the election of “[a] competent number of Justices of the peace . . . in each Township . . .”⁸⁴ The supreme court consisted of three judges⁸⁵ appointed by the governor with the advice and consent of the senate.⁸⁶ The supreme court had only appellate jurisdiction, but the general assembly had the authority to give it original jurisdiction in capital or chancery cases.⁸⁷ The supreme court was to sit at the seat of government, which was originally established at Corydon⁸⁸ and later moved to Indianapolis.

The original circuit courts of the new state consisted of a president judge and two associate judges.⁸⁹ The general assembly selected the president judge of the circuit court, but the people of the county elected the associate judges.⁹⁰ Originally, Indiana was divided into three circuits, but that number could be increased by the general assembly.⁹¹ The judges were to ride the circuit and hold court in their respective counties.⁹² All judges were appointed for seven-year terms.⁹³ If there was a vacancy in any court because of death, resignation, or removal, the successor was to be appointed in the same manner as the predecessor.⁹⁴

The lower courts in Indiana consisted of justices of the peace elected in each township, as needed, for five-year terms.⁹⁵ The common pleas courts, which existed during the territorial times, were eliminated by the 1816 Constitution.⁹⁶

80. Act of Apr. 19, 1816, ch. 57, 3 Stat. 289.

81. Ordinance of July 10, 1816 *in* WEST’S ANNOTATED INDIANA CODE (Constitution and Organic Laws volume) 105 (1995).

82. Resolution of Dec. 11, 1816, 3 Stat. 399; 1 CHARLES KETTLEBOROUGH, CONSTITUTION MAKING IN INDIANA xxi (1916).

83. IND. CONST. of 1816, art. V, § 1.

84. *Id.* § 12.

85. *Id.* § 2.

86. *Id.* § 7.

87. *Id.* § 2.

88. *Id.* § 11.

89. *Id.* § 2.

90. *Id.* § 7.

91. *Id.* § 3.

92. *Id.* § 5.

93. *Id.* § 4.

94. *Id.* § 10.

95. *Id.* § 12.

96. 2 MONKS, *supra* note 31, at 532.

One objection that was raised regarded the time limit placed on the judges' terms of office. The people at that time believed that good behavior, rather than a time limit, should determine a judge's tenure in office. They also felt that elected judges would be prone to yield their judicial independence to cater to public opinion in order to secure reelection.⁹⁷

By 1818, the neatly organized court system established by the 1816 Constitution began to unravel. A state probate court was established, and the justice of the peace court's jurisdiction became coextensive with the county, rather than the township, in some criminal and civil cases of less than fifty dollars.⁹⁸ A few years later, the existing circuits were reconfigured due to the addition of new counties.⁹⁹

Two decades after the adoption of the 1816 Constitution, Jacksonian Democracy, which advanced the equality of all citizens and popular elections for all offices, including judges, was at its pinnacle.¹⁰⁰ These ideals were first expressed by an act of the general assembly in 1829 providing for the election of probate judges in each county to seven-year terms.¹⁰¹ Further, the probate court judges could be qualified by the circuit court judges, as well as by judges of the supreme court.¹⁰² The probate court judges were no longer required to be lawyers;¹⁰³ rather, they just needed to have legal qualifications satisfactory to either the circuit court or supreme court judges.

Attempts to call constitutional conventions were unsuccessful both in 1840 and 1846.¹⁰⁴ By 1849, a constitutional referendum was supported by the legislature and resulted in a convention in 1850.¹⁰⁵ At the 1850 convention, there were attempts to abolish associate judgeships, reduce court expenses, appoint justices of the peace, and abolish the probate system by replacing it with probate circuit judges to be elected by the people.¹⁰⁶ In January 1849, once again adding to the fragmentation of the Indiana trial court system, the general assembly

97. 1 KETTLEBOROUGH, *supra* note 82, at xxiii.

98. 2 MONKS, *supra* note 31, at 517, 532.

99. By 1824, the original three circuits had been extended to five, and the state then consisted of fifty-one counties. Theophilus Moll, *Re-arranging the Indiana Judiciary*, 2 IND. L.J. 293, 295 (1927) (a master in chancery was to be appointed by the president judge in each county for each circuit).

100. See Maxwell Bloomfield, *Law vs. Politics: The Self-Image of the American Bar (1830-1860)*, 12 AM. J. LEGAL HIST. 306 (1968).

101. Act of June 23, 1829, ch. 29, § 1, 1829 Ind. Acts 33, 33-34 (superseded).

102. *Id.*

103. The general assembly required probate court judges to receive a certificate from "either one of the president judges of the circuit courts, or from one of the judges of the supreme court that he is qualified to discharge the duties of such office[;] [however] . . . this [requirement could] not be so construed as to require any such applicant to be a professional character." *Id.*

104. Moll, *supra* note 99, at 296-97.

105. *Id.* at 297.

106. *Id.* at 297-98.

established a common pleas court in Marion County.¹⁰⁷

What began as a tightly organized system first established upon the creation of the new state had begun to evolve into a multi-tiered hodgepodge of different courts created by the legislature to meet specific parochial needs. With the ad hoc addition of each new court, the structure of the trial court system became more and more unrecognizable.

C. The 1851 Constitution

The 1851 Constitution became effective on November 1, 1851, and although it has been amended, it remains in effect today. The main article of the 1851 Constitution affecting the organization of the judicial system is Article VII.

Article VII of the 1851 Constitution replaced article V of the 1816 Constitution and authorized the general assembly to divide the state into various circuits.¹⁰⁸ It also abolished the three-judge circuit courts, replacing them with one-judge circuit courts.¹⁰⁹ It provided for a supreme court with a minimum of three and a maximum of five judges.¹¹⁰ The constitution required the general assembly to establish as many judicial districts as there were supreme court judges.¹¹¹ One supreme court judge had to come from each district.¹¹² The constitution also provided for the popular election of the judges of both the supreme court¹¹³ and the district courts¹¹⁴ and reduced their tenure from seven to six years.¹¹⁵ The constitution provided for justice of the peace courts as well.¹¹⁶ These courts were authorized to handle minor misdemeanors¹¹⁷ and some civil cases.¹¹⁸

Essentially, article VII established a three-tiered court system with the supreme court, circuit courts of general jurisdiction, and justice of the peace courts. However, the 1851 Constitution reserved to the general assembly the authority to establish inferior courts.¹¹⁹

No sooner than the people of this state had spoken about the organization of

107. 2 MONKS, *supra* note 31, at 532.

108. IND. CONST. art. VII, § 9 (as adopted 1851) (amended 1970).

109. *Id.* § 8 (as adopted 1851) (amended 1970).

110. *Id.* § 3 (as adopted 1851) (amended 1970).

111. *Id.* In 1852, the general assembly created a fourth seat on the supreme court. 2 MONKS, *supra* note 31, at 531. In 1872, the general assembly added a fifth seat. 2 MONKS, *supra* note 31, at 531.

112. IND. CONST. art. VII, § 3 (as adopted 1851) (amended 1970).

113. *Id.*

114. *Id.* § 9 (as adopted 1851) (amended 1970).

115. *Id.* § 2 (supreme court) (as adopted 1851) (amended 1970); *id.* § 9 (circuit courts).

116. *Id.* § 14 (as adopted 1851) (repealed 1984).

117. Moll, *supra* note 99, at 297-98.

118. 2 IND. REV. STAT. pt. 4, ch. 1, § 10 (1852) (repealed 1975); KETTLEBOROUGH, *supra* note 82, at 249-59.

119. IND. CONST. art. VII, § 1 (as adopted 1851) (amended 1970).

the court system through the replacement of their constitution, then additional revisions were made in 1852. One significant revision was that the general assembly gave mayors judicial powers equal to those enjoyed by the justices of the peace for civil and criminal offenses and exclusive jurisdiction over ordinance violations.¹²⁰ However, a violation of town ordinances was reserved to the justices of the peace, thus making a distinction between the city and town courts.¹²¹ Also, pursuant to the new amendments, the associate judges for the various counties performed administrative, as well as judicial, duties.¹²²

Also in 1852, the general assembly abolished the old probate courts¹²³ and established common pleas courts in their stead.¹²⁴ Although the state was divided up into forty-three districts with one judge,¹²⁵ these courts were really county courts.¹²⁶ The common pleas courts had exclusive jurisdiction over probate matters.¹²⁷ They had concurrent jurisdiction with the circuit courts over various items relating to probate matters, e.g. guardianships, estates, and actions against heirs and devisees.¹²⁸ They also had jurisdiction (concurrent with the circuit court) over civil cases with an amount in controversy under \$1000¹²⁹ and original jurisdiction over misdemeanors.¹³⁰ An appeal from the common pleas court could be made to the circuit courts or directly to the supreme court.¹³¹ Moreover, the common pleas courts had appellate jurisdiction over the justice of the peace courts.¹³²

Finally, the judge of the common pleas court was to preside over a newly created court of conciliation.¹³³ A judgment from this court was not binding unless the parties so agreed.¹³⁴ If they agreed, there was no appeal,¹³⁵ nor could they bring a similar action in another court.¹³⁶ This allowed the parties to resolve

120. 1 IND. REV. STAT. ch. 17, § 18 (1852) (repealed 1857); Moll, *supra* note 99, at 298-99.

121. 2 IND. REV. STAT. ch. 108, § 57 (1852) (superseded); Moll, *supra* note 99, at 298-99.

122. 1 MONKS, *supra* note 31, at 310. Today, county commissioners fulfill the administrative duties once performed by a circuit judge.

123. 2 IND. REV. STAT. pt. 1, ch. 8, § 43 (1852) (superseded).

124. *Id.* § 1 (superseded).

125. *Id.* § 3 (superseded).

126. Some of the common plea courts served more than one county. *Id.* See also 2 MONKS, *supra* note 31, at 519 (stating that common pleas courts were really county courts).

127. 2 IND. REV. STAT. pt. 1, ch. 8, § 43 (1852) (superseded).

128. *Id.* § 5 (superseded).

129. *Id.* § 11 (superseded).

130. *Id.* § 14 (superseded) (common pleas courts had original jurisdiction except where the justice of peace court had exclusive jurisdiction).

131. *Id.* § 13 (superseded).

132. *Id.*

133. 2 IND. REV. STAT. pt. 2, ch. 2, § 2 (1852) (repealed 1865); 1 MONKS, *supra* note 31, at 346-47.

134. 1 MONKS, *supra* note 31, at 347.

135. 2 IND. REV. STAT. pt. 2, ch. 2, § 6 (1852) (repealed 1865).

136. *Id.*

the dispute without having to go through the formalities of the circuit court process.¹³⁷

In 1865, the general assembly abolished the courts of conciliation¹³⁸ and established criminal courts for any county having more than 10,000 voters.¹³⁹ Two years later, the general assembly authorized the organization of criminal circuit courts in any county with a population of 7000 or more.¹⁴⁰ Unlike the regular circuit court judge, who enjoyed a six-year term, criminal court judges were elected to four-year terms.¹⁴¹ In 1881, the general assembly changed the title of the criminal circuit courts to criminal courts.¹⁴² At this time, there were only two criminal courts in the state, one in Allen County and one in Marion County. However, by 1883, the Allen Criminal Court was abolished leaving only the Marion Criminal Court in existence.¹⁴³

By 1871, the larger metropolitan communities felt the ever increasing demand for more judicial resources, and the general assembly established superior courts in counties which contained an incorporated city of at least 40,000.¹⁴⁴ Two years later, the common pleas courts were abolished, and their business, including the probate matters that had been pending there since the abolition of the probate courts, was transferred to the circuit court.¹⁴⁵

As previously mentioned, the 1851 Constitution also provided that a competent number of justices of the peace were to be elected by the voters of each township.¹⁴⁶ The general assembly gave the county commissioners the discretion to determine the number of justices for each township.¹⁴⁷ However, the general assembly provided that there be no more than two per township with one

137. 1 MONKS, *supra* note 31, at 347.

138. Act of Nov. 30, 1865, ch. 57, § 1, 1865 Ind. Acts 163, 163.

139. Act of Dec. 20, 1865, ch. 45, §§ 2, 5, 1865 Ind. Acts 150, 150-51 (repealed 1981). Only Marion County qualified at that time. *See* Act of Dec. 20, 1865, ch. 48, § 1, 1865 Ind. Acts 153, 153 (repealed 1893).

140. Act of Mar. 8, 1867, ch. 16, § 1, 1867 Ind. Acts 77, 77-78 (repealed 1881). However, by 1869, the requirement for the establishment of a criminal circuit court had been further amended to authorize one in any county in which there was an incorporated city with a resident population of 10,000 or more, without regard to the number of voters contained in the county. Act of Apr. 23, 1869, ch. 21, § 6, 1869 Ind. Acts 46, 48 (superseded).

141. Act of May 13, 1869, ch. 25, § 2, 1869 Ind. Acts 52, 52 (repealed 1978).

142. Act of Apr. 12, 1881, ch. 34, § 8, 1881 Ind. Acts 111, 112 (repealed 1978).

143. Act of Feb. 27, 1883, ch. 29, § 1, 1883 Ind. Acts 33, 33 (expired).

144. Act of Feb. 15, 1871, ch. 22, § 1, 1871 Ind. Acts 48, 48-49 (repealed 1975). Only Marion County qualified, but later legislation allowed counties of smaller populations and even two counties to be united in a circuit for circuit court purposes. 1 MONKS, *supra* note 31, at 351.

145. Act of Mar. 6, 1873, ch. 29, § 80, 1873 Ind. Acts 87, 96-97 (repealed 1981).

146. IND. CONST. art. VII, § 14 (as adopted 1851) (repealed 1984).

147. Act of Mar. 8, 1883, ch. 130, § 1, 1883 Ind. Acts 190, 190-91 (repealed 1975); DAVID McDONALD, A TREATISE ON THE POWERS AND DUTIES OF JUSTICES OF THE PEACE, MAYORS, MARSHALS, AND CONSTABLES IN THE STATE OF INDIANA § 1 (Cincinnati, Robert Clarke & Co., Louis O. Schroeder ed., rev. ed. 1883).

additional justice for each township that contained an incorporated town or city.¹⁴⁸ Because it chose not to alter the jurisdiction of the mayors, the general assembly also reaffirmed the responsibility of mayors in fulfilling various judicial functions similar to those executed by the justices of the peace.¹⁴⁹ In fact, mayors had greater jurisdiction than the justices of the peace because mayors could hear cases punishable by fine and imprisonment, so long as the fine did not exceed twenty-five dollars and the period of imprisonment did not exceed thirty days.¹⁵⁰

By 1889, the Indiana Court of Claims was established to hear actions against the state.¹⁵¹ The court of claims was, in reality, the Marion County Superior Court, and appeals from that court were taken directly to the supreme court.

Because the supreme court was unable to eradicate its docket, the general assembly provided for the appointment of five commissioners to help the supreme court with its caseload.¹⁵² These supreme court commissioners were the forerunners of the appellate court which was temporarily created in 1891, to relieve the supreme court's congested docket. The governor was to appoint five judges, no more than three of whom could belong to the same political party, one being from each of the five judicial districts established for the selection of supreme court justices.¹⁵³ The general assembly made the appellate court permanent in 1901.¹⁵⁴

By the end of the century, the state had on two occasions set up an organized system of courts, once at the state's inception and again with the adoption of the 1851 Constitution. The latter system had two tiers of trial courts with the circuit courts as the courts of general jurisdiction and the justice of the peace courts handling minor matters. However, soon after adopting this system, the general assembly began tinkering with the organization of the courts once again. Further, the legacy of Jacksonian Democracy and its doctrine advocating the political election of almost all public servants remained firm. However, there was public support for electing judges at different times to avoid the partisan influence on judicial races and to focus public attention solely on the judicial branch. As a result, during the next century there would be movements to pull the judiciary away from the partisan political arena.

D. The Court System in the 20th Century

148. Act of Mar. 8, 1883, ch. 130, § 1, 1883 Ind. Acts 190, 190-91 (repealed 1975).

149. For example, they could hold city court with exclusive jurisdiction over violations of bylaws and ordinances of the city and townships in which the city was situated. See Act of Mar. 14, 1867, ch. 15, § 17, 1867 Ind. Acts 33, 37-38 (superseded).

150. *Id.*

151. Act of Mar. 9, 1889, ch. 128, § 1, 1889 Ind. Acts 265, 265 (repealed 1985).

152. Act of Feb. 22, 1889, ch. 32, § 1, 1889 Ind. Acts 41, 41. The supreme court declared this act unconstitutional. *State ex rel. Hovey v. Noble*, 21 N.E. 244 (Ind. 1889).

153. Act of Feb. 22, 1889, ch. 32, § 1, 1889 Ind. Acts at 41.

154. For a detailed history of the Indiana Appellate Court, see Robert H. Staton & Gina M. Hicklin, *The History of the Court of Appeals of Indiana*, 30 IND. L. REV. 203 (1997).

By the turn of the century, the Indiana Supreme Court continued to consist of five members and had jurisdiction over appeals from the circuit courts. The members of the court were selected from five geographic districts and enjoyed six-year terms. In 1901, the year the appellate court was made permanent, a sixth member was added to the court, and it was split into two divisions.¹⁵⁵ The state was divided into two districts, northern and southern, and the appellate court judges had to reside in their respective districts.¹⁵⁶

At the turn of the century, the general assembly also directed its attention to the trial courts. After having been confronted with the growing problem of juvenile offenders, the general assembly created the juvenile court system in 1903 providing a separate juvenile court for each county with a population over 100,000.¹⁵⁷ In all other counties, the circuit court judge presided over the juvenile court.¹⁵⁸

The city courts were also established by the general assembly after the turn of the century.¹⁵⁹ City court judges were elected to four-year terms¹⁶⁰ and had exclusive jurisdiction over city ordinances and concurrent jurisdiction over violations where the penalty was less than five hundred dollars or six months imprisonment.¹⁶¹ All appeals were heard de novo in the circuit court or the criminal court.¹⁶²

In 1925, the general assembly established municipal courts in counties

155. Act of Mar. 12, 1901, ch. 247, § 2, 1901 Ind. Acts 565, 565 (repealed 1971). In 1959, the general assembly increased the number of judges from six to eight authorizing the governor to appoint the two new judges, one from each district and one from each party. These judges were to serve until succeeding judges were elected at the next election. Act of Mar. 12, 1959, ch. 238, 1959 Ind. Acts 567 (repealed 1971).

156. Act of Mar. 12, 1959, ch. 238, §§ 3-4, 1959 Ind. Acts 567 (repealed 1971).

157. Act of Mar. 10, 1903, ch. 237, §§ 1-12, 1903 Ind. Acts 516; §§ 1-2 (repealed 1963); §§ 3-12 (repealed 1978). In 1931, the population requirement was increased to 300,000. Act of Mar. 2, 1931, ch. 43, 1931 Ind. Acts 102 (amended 1945). It was lowered to 250,000 in 1945, thereby creating juvenile courts in Marion, Allen and Lake Counties. Act of Mar. 9, 1945, ch. 237, § 1, 1945 Ind. Acts 1647, 1647 (repealed 1978). The Allen County Juvenile Court was abolished in 1971, and the jurisdiction therein was transferred to the Allen Superior Court. Act of Apr. 8, 1971, No. 429, §§ 1, 4, 1971 Ind. Acts 2007, 2007 (repealed 1982). Similarly, the Lake County Juvenile Court was abolished in 1973, and the Marion County Juvenile Court was abolished in 1978. Act of Apr. 23, 1973, No. 308, 1973 Ind. Acts 1651 (codified as amended at IND. CODE § 33-5-29.5-1 to -71 (1993 & Supp. 1996); Act of Mar. 10, 1978, No. 136, § 45, 1978 Ind. Acts 1196, 1281. See IND. CODE § 33-5.1-2-4 (Supp. 1996) (jurisdiction of Marion Superior Court includes juvenile cases).

158. Act of Mar. 10, 1903, ch. 237, § 1, 1903 Ind. Acts at 516-17.

159. Act of Mar. 6, 1965, ch. 129, § 215, 1905 Ind. Acts 219, 375 (repealed 1980). The creation of the Marion County Municipal Court abolished the Indianapolis City Court.

160. *Id.* § 216 at 376 (repealed 1980).

161. *Id.* § 217 at 377 (repealed 1980).

162. *Id.*

containing an incorporated city of at least 300,000.¹⁶³ At this time, only Marion County qualified for such a court. Each municipal court consisted of four judges appointed by the governor for four-year terms. Not more than two of the judges on each court were to be appointed from any one political party.¹⁶⁴ Unlike their counterparts in other communities, appeals from the civil docket went generally to the appellate court. Violations of city or town ordinances, which were regarded as criminal offenses, were appealed to the circuit court for trial de novo.¹⁶⁵ The creation of municipal courts eradicated any city court which existed in that same county, effective January 1, 1926.¹⁶⁶

To further supplement trial court resources, the legislature authorized the creation of magistrate courts in 1939.¹⁶⁷ A subsequent amendment in 1941 authorized magistrate courts in those counties in which the population exceeded 40,000 and there was no city judge.¹⁶⁸ These magistrate judges were appointed by the circuit court judge for a three-year term¹⁶⁹ and no more than one-half of the magistrates could be from one party.¹⁷⁰ The magistrate court had original jurisdiction over traffic laws and ordinances and concurrent jurisdiction with other courts over criminal cases where the penalty sought was less than five hundred dollars or six months in jail.¹⁷¹ Like the municipal courts, appeals from a magistrate court were taken to the circuit court de novo.¹⁷²

Subsequently, town courts were created in 1961.¹⁷³ The board of trustees of a town had the authority to create a town court in all counties except Lake, Marion, and Allen which probably had enough judicial resources to handle the types of cases entrusted to town courts. Town judges were elected to four-year terms and vacancies could be filled by the town board.¹⁷⁴ The town court's jurisdiction was similar to that of the city courts and appeals were, likewise, taken to the circuit court de novo.¹⁷⁵

By the last quarter of the 20th century, Indiana had a multiplicity of courts which included: The supreme court, court of appeals, circuit, superior, criminal,

163. Act of Mar. 12, 1925, ch. 194, § 1, 1925 Ind. Acts 457, 457 (repealed 1995).

164. *Id.* § 3 at 458 (repealed 1995).

165. *Id.* § 11 at 460-61 (repealed 1980).

166. *Id.* § 14 at 461 (repealed 1995).

167. Magistrates Court Act, ch. 164, § 1, 1939 Ind. Acts 753, 753-54 (codified as amended at IND. CODE §§ 33-7-1-1 to -8 (1971)). The magistrate courts survived until January 1, 1976. Act of May 5, 1975, No. 305, § 54, 1975 Ind. Acts 1667, 1702 (repealing IND. CODE §§ 33-7-1-1 to -8 (1971)).

168. Act of Mar. 3, 1941, ch. 80, § 1, 1941 Ind. Acts 200, 200 (repealed 1975).

169. Act of Mar. 10, 1939, ch. 164, § 2(c), 1939 Ind. Acts at 756. (Interestingly, the magistrate's term also expired when the circuit judge left office.) *Id.*

170. *Id.* § 2(a).

171. *Id.* § 4 at 759-60 (repealed 1975).

172. *Id.* § 6(f) at 762 (repealed 1975).

173. Act of Mar. 6, 1961, ch. 76, § 1, 1961 Ind. Acts 144, 144-45 (repealed 1978).

174. *Id.* §§ 2-3 (repealed 1978).

175. *Id.* §§ 1-2 (repealed 1978).

juvenile, probate, municipal, justice of the peace, city, town, and magistrate courts. When a need for additional judicial resources arose, the general assembly's response was to create an autonomous court.

In 1965, the general assembly authorized the first truly unified court in Indiana, the St. Joseph Superior Court.¹⁷⁶ In a unified system, no new court is created in response to a need for increased judicial resources as in an autonomous court system. Instead, a new judge is added to the existing court to help relieve an overcrowded docket. For example, before unification, St. Joseph County had two superior courts. However, as a result of the 1965 act, they were merged into one court with an additional judge.¹⁷⁷ Thus, the court consisted of three judges who worked together and shared the responsibility of the management of the cases entrusted to that court.

In 1966, the Judicial Study Commission recognized that Indiana's court structure was fragmented, disorganized, and inefficient. To remedy these problems, the commission recommended that all Indiana courts be organized pursuant to a unified court system like the St. Joseph Superior Court, rather than the autonomous court system that then existed in Indiana.¹⁷⁸ In addition to proposing more judges, rather than more courts, advocates of the unified court structure also wanted to eliminate several of the inferior trial courts. They maintained that consolidating the courts into fewer levels was certain to be more efficient.¹⁷⁹ However, those resisting changes in the current system argued that municipal courts, city courts, and county courts were essential cogs in the judicial machinery. They argued that trivial matters such as traffic violations and small claims should not be thrown into the same hopper with murder cases and million-dollar products liability claims.¹⁸⁰

In response, those who promoted the unified court system contended that creating courts to handle inferior matters is equivalent to creating inferior courts and placing the judges in such courts in an inferior status. Allowing these courts to continue in their inferior status, as such,

tends to reduce the public expectation of them. It excuses the low judicial salaries, inadequate pensions, and poor courtrooms that have frequently identified these courts. Its most damaging effect, however, is that it makes recruitment of good judges difficult.

Assigning to them only minor matters places them outside of the interest of the more influential members of the bar. As attorney fees in these courts are relatively low in comparison to others, the lawyers who

176. Act of Mar. 11, 1965, ch. 266, 1965 Ind. Acts 727 (codified as amended at IND. CODE §§ 33-5-40-1 to -72 (1993 & Supp. 1996)).

177. *Id.* § 1 (codified as amended at IND. CODE § 33-5-40-1 (1993)). At present, St. Joseph County has eight superior court judges. IND. CODE § 33-5-40-1 (1993).

178. JUDICIAL STUDY COMM'N, 1966 REPORT 88-90 (1966).

179. Lowe, *supra* note 15, at 320.

180. Truax, *supra* note 16, at 328.

practice in them are often either the inexperienced or are those willing to take the lower paying cases. Because of this, attorneys who become acquainted with the problems of these courts sometimes lack the ability or influence to help them. Thus they are consistently neglected by bar associations.¹⁸¹

Further, another proponent of unification argued that:

even small causes call for a high type of judge if they (the cases) are to be determined justly as well as expeditiously. A judge with the position and title of Judge of the Court or Justice of the State . . . is none too good for cases which are of enough importance to the parties to bring to the court and hence ought to be important to a state seeking to do justice to all.¹⁸²

Although the pleas of many throughout the nation were for court reform through unification,¹⁸³ the Indiana General Assembly was unwilling to make such sweeping changes at the same time it amended the judicial article. However, by 1975, the general assembly had enacted the County Court Law which revamped the organization of Indiana trial courts of limited jurisdiction by replacing them with county courts.¹⁸⁴ The County Court Law provided for the immediate elimination of the justice of the peace courts and for the elimination of the city and town courts at a later date.¹⁸⁵ However, before the date upon which the city and town courts were to be eliminated, the general assembly enacted a statute granting cities and towns the authority to create or abolish city and town courts for themselves.¹⁸⁶ Thus, the legislature thwarted its own attempts at unification and simplification of the trial court system.

Pursuant to the County Court Law, sixty-four counties would either have their own county court or would share one with another county.¹⁸⁷ In those communities that were not serviced by a superior court or a county court, the responsibility for the management of the cases that had previously been handled by the justices of the peace: small claims, misdemeanor, and traffic, fell to the court of general jurisdiction, the circuit court.¹⁸⁸

Subsequently, the general assembly created and established small claims

181. *Id.* at 327-28.

182. Pound, *supra* note 14, at 226.

183. See Glenn R. Winters, *Trends in Court Reform*, 50 JUDICATURE 310 (1967).

184. Act of May 5, 1975, No. 305, § 48, 1975 Ind. Acts 1667, 1683-1701 (codified as amended at IND. CODE §§ 33-10.5-1-1 to 33-10.5-8-4 (1993 & Supp. 1996)) (However, the Marion Municipal Courts, which were inferior courts of limited jurisdiction, continued to exist.)

185. *Id.* § 55 (abolishing city and town courts). *Id.* § 54 (abolishing justice of the peace courts).

186. IND. CODE § 33-10.1-1-3 (1993).

187. IND. CODE § 33-10.5-2-2 (1976) (repealed 1977).

188. AMERICAN JUDICATURE SOC'Y, INDIANA TRIAL COURTS 37 (1976).

courts in those counties containing a consolidated city of the first class.¹⁸⁹ Marion was the only county that qualified. The Marion County Small Claims Court was composed of one or more divisions, one for each township within the county.¹⁹⁰ The judges of the small claims court were elected for four-year terms, by the registered voters residing within the township.¹⁹¹ Appeals from judgments of the small claims court were taken directly to the municipal court of the county and tried de novo.¹⁹² Thereafter, the appeals from the municipal court went directly to the Indiana Court of Appeals.¹⁹³ The only other significant activity of the general assembly regarding court structure during the 1980s was to increase the number of judges and districts on the Indiana Court of Appeals¹⁹⁴ and create the Indiana Tax Court, which had exclusive jurisdiction over any case that arose under the tax laws of the state.¹⁹⁵

Attempts to unify the courts on a local basis continued through efforts initiated in 1986 by the Indiana Judges Association.¹⁹⁶ That association was able to persuade the general assembly to create a commission to address the lack of uniformity in the Indiana court system.¹⁹⁷ The Commission on Trial Courts consisted of eight legislators, the Chief Justice of Indiana, a trial judge, a member of a county council, a member of the county commissioners, and a county clerk.¹⁹⁸ It noted that 118 legislative proposals concerning either the creation of new courts, the upgrading of county courts to superior courts, or the changing of subject matter jurisdiction of the particular courts had been presented to the general assembly during its last six sessions.¹⁹⁹ After conducting field hearings, meetings and opinion surveys, the Commission recommended that all trial courts in each circuit be merged into a single court with one or more judges to be specified by statute dependent upon the needs of the community for judicial resources.²⁰⁰ Further, the Commission recommended against a multi-county organization except to the extent of permitting courts to share the cost of probation, public defender programs, and juvenile detention facilities. As a result of the Commission's recommendations, Senate Bill 12 was introduced in the 1989 general assembly. However, because Senate Bill 12 also sought to transfer

189. IND. CODE § 33-11.6-1-3 (1993).

190. IND. CODE § 33-11.6-1-5 (1993).

191. *Id.* § 33-11.6-3-1 (Supp. 1996).

192. *Id.* § 33-11.6-4-14 (1976) (current version at IND. CODE § 33-11.6-4-14 (Supp. 1996)). Appeals are now taken to the county superior court and tried de novo.

193. *Id.* § 33-10.5-7-10 (Supp. 1996).

194. *Id.* § 33-2.1-2-2 (Supp. 1996).

195. *Id.* §§ 33-3-5-1 to -20 (1993 & Supp. 1996); *State v. Sproles*, 672 N.E.2d 1353 (Ind. 1996).

196. See PROPOSAL, *supra* note 1.

197. Act of May 6, 1987, No. 300, § 4, 1987 Ind. Acts 2939, 2941-42 (expired 1988).

198. PROPOSAL, *supra* note 1, at iii.

199. INDIANA LEGISLATIVE SERVS. AGENCY, FINAL REPORT OF THE COMMISSION ON TRIAL COURTS 1 (1988).

200. *Id.* at 20.

the funding of the court system from the counties to the state, it was rejected by the general assembly, effectively killing any success for the other proposals contained in the bill.²⁰¹

As of 1995, no statewide attempt to unify the courts had been undertaken. However, attempts have been made on a piecemeal basis. For example, the Monroe Superior Court, which consisted of five judges, was merged with the Monroe Circuit Court and became the Monroe Unified Circuit Court consisting of six judges.²⁰² Additionally, the Marion County Municipal Courts were absorbed into the Marion Superior Courts.²⁰³

Although during the 20th century there was some response to the reformers' proposals for unification in that the general assembly eliminated some of the inferior trial courts, no other significant steps toward statewide unification were made. Today, Indiana's trial court system remains fragmented, unorganized, and inefficient.

III. JUDICIAL SELECTION

Initially, the justices of the Indiana Supreme Court were appointed by the governor with the advice and consent of the senate. The president judge of the circuit court was selected by the general assembly, and the associate judges of the circuit court were elected by the people. A review of Indiana's history of judicial selection reveals an evolution from the original appointment of judges, to the election of judges pursuant to the 1851 Constitution, to the current hybrid method of selection in which the judges of the appellate and supreme courts are selected by merit, and most of the trial court judges are elected.

The method of selecting judges has been debated throughout the nation for years. As early as 1929, the American Bar Association actively discussed moving the selection of judges away from the traditional political contest.²⁰⁴ Such proposals included selecting judges without regard to party affiliation, for longer terms, and at elections other than the general elections.²⁰⁵

The same concerns about judicial independence and selecting judges through

201. *Id.* at 15. In 1987, the Commission noted that the state revenue from the courts exceeded the state expenditure on courts by \$7,850,095, whereas the county expenditure on the courts exceeded the revenues generated from the fees collected by \$32,609,175. *Id.*

202. IND. CODE §§ 33-4-10-1 to -8 (1993 & Supp. 1996). As explained in the testimony before the House of Representatives and Senate, the Monroe Superior and Circuit Courts had been de facto unified since January 1981 when James N. Dixon, formerly of the superior court, was elected to the circuit court, and joined the circuit court judges in a unification program merging the courts' budgets, probation departments, and scheduling and general administration. *See* LOCAL COURT RULES OF MONROE CIRCUIT AND SUPERIOR COURTS.

203. Act of May 3, 1995, No. 16, §§ 17-22, 1995 Ind. Acts 1513, 1533-37.

204. William H. Eichorn, *Some Present Day Problems of the Bench*, 4 IND. L.J. 260, 261 (1929).

205. *Id.* at 261 (separate judicial elections were authorized by a provision of the Indiana Constitution). IND. CONST. art. II, § 14.

the political process were addressed by the members of the bar in 1934.²⁰⁶ One of its subcommittees on the administration of justice noted that while some judges were overutilized, some were grossly underutilized.²⁰⁷ To resolve this problem, it was suggested that the chief justice should be authorized to transfer judicial personnel from one circuit to another.²⁰⁸ Further, the subcommittees suggested that judges should be appointed rather than elected with the aid of “a judicial council” to advise the governor in the selection process.²⁰⁹ The general assembly did not accept the recommendation to change the selection method but did follow the committee’s suggestion to establish a judicial council to study the court system and provide information and recommendations to the general assembly.²¹⁰ The Council was immediately organized and undertook to solicit opinions from Indiana practitioners. Most lawyers surveyed desired the elimination of party politics in the selection of judges (though a majority could not countenance direct gubernatorial appointment of trial court judges) and the reallocation of judicial personnel.²¹¹ The Council accepted the survey’s results and recommended the non-partisan election of judges.

By 1940, the Judicial Council advocated sweeping changes to Article VII of the Indiana Constitution by proposing that judges either be appointed or elected on a non-partisan basis. However, this proposal, which was one of fifteen suggested amendments to the state’s constitution, was rejected by the general assembly in 1944.²¹²

Again in 1956, the Indiana State Bar Association advocated that judges not be a part of the partisan political process.

The fact is that the non-partisan system proposed by the Indiana State Bar Association would remove from a few party bosses the power they now invoke in selection at will the nominees for Supreme and Appellate Court benches, in convention, where nomination of these judges is all-too-frequently a matter of trading votes or geographically balancing a ticket; would remove from the hands of local party bosses the power of hand-picking candidates for trial court benches and would give to all voters the power to vote in both the primary and general elections for the candidate for the bench who the people feel is best qualified without deterrence of having to desert their own political party or cross party lines to do so.

By placing judicial candidates on a non-partisan ballot the voters

206. Maurice E. Crites, *The Work of the Courts*, 10 IND. L.J. 77 (1934).

207. *Report of the Indiana State Committee on Governmental Economy on the Administration of Justice in Indiana*, 10 IND. L. J. 111, 115-19 (1934).

208. *Id.* at 127 (In 1975 such a provision was enacted and has since been greatly underutilized. IND. CODE § 33-2.1-7-8 (1993)).

209. *Id.* at 136.

210. Act of Mar. 6, 1935, ch. 131, 1935 Ind. Acts 474 (repealed 1965).

211. INDIANA JUD. COUNCIL, FIRST ANNUAL REPORT 7, 10-11 (1936).

212. KETTLEBOROUGH, *supra* note 82, at 98.

could remain in their own party in selecting nominees for administrative and legislative office in the primary and not be required to “scratch” their ballot in the general election to avail themselves of the opportunity to select the best qualified person for judicial office.²¹³

Criticism of the political selection process continued in the 1960s. It was noted that partisan elected judges were an abnormality in the world except in the United States and Soviet Union.²¹⁴ However, others suggested that this method had come about not because of any dissatisfaction with the judiciary but as a reflection of the outburst of Jacksonian Democracy.²¹⁵

In 1959, the Indiana State Bar Association lobbied for the non-partisan election of judges. However, the bills presented in that year suffered a quiet defeat.²¹⁶ Subsequently, in 1961, the same proposal, known as the Indiana Plan, was polished and resurrected.²¹⁷ The various bills introduced under the plan provided for the judicial ballot to be separate from all other ballots at the general election and that it would not bear any party emblems.²¹⁸ If the incumbent judge intended to seek reelection, he or she announced his or her intention and would run in the November general election.²¹⁹ Any other candidates for judicial office would petition to have their names included on a special judicial ballot in the primary election and the candidate receiving the greatest number of votes in that contest would oppose the incumbent judge in the general election.²²⁰ On the judicial ballot in the November election, the incumbent judge’s name would appear first and would be identified as the present judge.²²¹ In both the primary and general elections, candidates for judge were to be prohibited from participating in campaign activity and could not be slated by any political party.²²² Political parties were even prohibited from expending monies to influence the election of a judge.²²³ Although the Indiana State Bar Association extensively campaigned in support of these bills, they were defeated.

213. Robert Hollowell & Ralph Hamill, *Judicial Selection and Tenure in Indiana a Challenge to the Bar*, RES GESTAE, Nov.-Dec., 1959, at 5, 5.

214. Note, *Judicial Selection and Tenure in Indiana: A Critical Analysis and Suggested Reform*, 39 IND. L.J. 364, 365 (1964) [hereinafter *Judicial Selection and Tenure*]; E. Blythe Stason, *Judicial Selection Around the World*, 41 J. AMER. JUD. SOC. 134, 141 (1958).

215. *Judicial Selection and Tenure*, *supra* note 213, at 364-65.

216. *Id.* at 372 & n.40.

217. *Id.* at 372-73 nn.41 & 44. The 1961 Indiana Plan was composed of three bills. S. 378-80, 92nd Gen. Ass’y, 1st Sess. (Ind. 1961). Only Senate Bill 378 was called out and voted upon. However, it was defeated 34-16. INDIANA SENATE JOURNAL, 92nd Gen. Ass’y, 1st Reg. Sess. 503 (Ind. 1961).

218. Ind. S. 379 § 2.

219. Ind. S. 378 § 1.

220. *Id.* §§ 7, 8.

221. *Id.* § 5.

222. *Id.* § 7-9.

223. *Id.* § 9.

One of the biggest criticisms of the Indiana Plan was that a candidate judge would have to personally run his own campaign which would entail a great deal of a candidate's time and financial resources. Critics feared that the electorate would be unable to put the best candidate into office because the voters would have no way of determining which candidate was the most qualified, inasmuch as the burden of informing the electorate of a candidate's qualifications was placed solely upon the candidate.²²⁴ The 1966 Judicial Study Commission recognized these shortcomings of the Indiana Plan and rejected it as an undesirable method of judicial selection.²²⁵

During the 1960s, the state bar began to consider a more radical alternative than even non-partisan election—merit selection. In February 1960, Robert A. Leflar addressed the Indiana State Bar and proposed the adoption of the Missouri Plan, which provided that a judicial nominating commission would screen and recommend candidates to the appointing authority and the appointee would thereafter be retained or rejected by the voters.²²⁶

The 1966 Judicial Study Commission proposed merit selection for judges, abolition of terms of court, and the establishment of a judicial conference for the education of trial and appellate court judges in Indiana.²²⁷ However, this was not the first time that Indiana had considered the merit selection of trial judges. In 1948, the Indiana Judicial Council recommended an amendment to article VII of the Indiana Constitution based upon the Missouri Plan which had received wide support throughout the country.²²⁸ The report concluded that the administration of justice should be on a non-political basis and judges should enjoy substantial security in their tenure in office. The proposal sought to increase the terms of office of all principal judges to a minimum of eight years, and vacancies in the office of judge would be filled by appointment by the governor from a panel of three upon recommendation of a non-partisan commission.²²⁹ Any judge, whether appointed or elected, could be recalled by the electors.²³⁰ The general assembly, however, failed to approve the proposed amendment.

Thereafter, Professor Leflar urged groups other than the state bar to enter the discussion for reform.²³¹ He had specifically urged business groups and the League of Women Voters to get actively involved in the promotion of reform. By 1966, the League of Women Voters of Indiana was actively advocating the modification of the trial courts into a single-tier system and the adoption of the merit selection plan for selection of judges at all levels of the state's judiciary.²³²

In 1965, the legislature replaced the Indiana Judicial Council with the Indiana

224. *Judicial Selection and Tenure*, *supra* note 214, at 374-76.

225. See JUDICIAL STUDY COMM'N, *supra* note 178, at 119.

226. Robert A. Leflar, *The Quality of Judges*, 35 IND. L. J. 289, 292-93 (1960).

227. JUDICIAL STUDY COMM'N, *supra* note 178, at 124-29.

228. INDIANA JUD. COUNCIL, 1948 ANNUAL REPORT 15-18 (1948).

229. JUDICIAL STUDY COMM'N, *supra* note 178, at 121-23.

230. *Id.* at 122.

231. Leflar, *supra* note 225, at 304-05.

232. *To Establish Justice*, IND. WOMAN VOTER, Jan. 1966, at 1, 1-2.

Judicial Study Commission, which took up the call for reform.²³³ The Commission's proposal advocated a unified court system with more central management at the district level and the adoption of the merit selection plan for selecting jurists.²³⁴ The academic and business communities similarly advocated a more structured trial court system with the allocation of judicial resources beyond the confines of the county structure.²³⁵

Ultimately, the general assembly adopted merit selection for the judges of the supreme court and the court of appeals, but rejected the proposal for merit selection of trial judges.²³⁶ However, the general assembly later accepted the idea of merit selection for counties in the major metropolitan areas of the state. Those counties were Lake, St. Joseph, Allen, and Vanderburgh, which contained the State's second through fifth largest cities.²³⁷

Marion County initially had a bipartisan selection plan for its municipal courts. This later was changed to the unique "odd man out" system for superior court elections.²³⁸

By the 1970s, Hoosiers' reluctance to abandon the Jacksonian requirement that all public officials be elected had waned. Significant inroads had been cut into the partisan political forest previously blanketing the state. Yet, the legislature's control of the local courts by the political ballot continues today. Currently, trial judges in Indiana are partisanly elected in eighty-seven counties, elected in non-partisan elections in two counties (Allen and Vanderburgh), selected by merit selection in two counties (Lake and St. Joseph), and elected in the unique "odd man out" system in one county (Marion).

IV. RECENT REFORM PROPOSALS

Having wandered through the developments of the Indiana judiciary and

233. JUDICIAL STUDY COMM'N, *supra* note 178.

234. Theodore D. Nering, *An Effective Judicial Department for Indiana*, RES GESTAE, Apr., 1968, at 5, 5-10. Mr. Nering served as the first executive secretary of the Indiana Judicial Study Commission.

235. A. James Barnes and Malcolm L. Morris, *A Report on the Management of the Indiana Trial Court System*, IND. BUS. REV., Jan.-Feb. 1969, at 7, 7-12.

236. H.R.J. Res. 12, 96th Gen. Ass'y (Ind. 1967).

237. The Allen and Vanderburgh County merit selection plans in predominantly Republican communities were changed to non-partisan selection methods in 1983. IND. CODE § 33-5-5.1-29.1 (1993) (Allen County) and IND. CODE § 33-5-43.2-1 (1993) (Vanderburgh County). The legislature, historically Republican, retained the merit selection system in the predominantly democratic counties of Lake and St. Joseph. Attempts to return Lake and St. Joseph counties to partisan election or non-partisan election by the Democratic House of Representatives were rejected by the Republican Senate in both 1993 and 1994.

238. IND. CODE § 33-5.1-2-8 (Supp. 1996). The "odd man out" method of selecting judges permitted political parties to nominate not more than eight candidates for superior court judge. Then, at the following general election, the electorate would vote for fifteen of the candidates. The candidates with the highest number of votes would then fill any vacancies.

changes in the method of selecting Hoosier judges, this Article turns to recent attempts at reform and reforms which can be expected in the future. The bar, as well as business and legislative study groups, have consistently advocated eradicating both the multi-tier trial court system and the politicalization of judge selection. The movement toward these changes has been advanced most recently by the Indiana Judges Association. A past president of the association, Wesley W. Ratliff, appointed a committee to study, survey, and make recommendations concerning the reform of Indiana's judiciary.²³⁹ In 1978, the committee recommended: 1) a single-tier trial court system, 2) establishment of districts, and 3) selection of all judges by merit selection.²⁴⁰ These same proposals were again made by the Indiana Judges Association in 1986. Although the Association was unsuccessful in causing any structural change, it succeeded in persuading the legislature to once again study the proposal through the establishment of a Trial Court Commission.²⁴¹ This new commission advocated a single-tier trial court system with the ability to shift judicial resources from one county to another, but shied away from the more controversial selection question.²⁴²

Recently, advocates for consolidation of the courts turned to the Chief Justice of Indiana for relief, pursuant to section 33-2.1-7-8 of the Indiana Code.²⁴³ This statute, known as the "transfer and districting statute," provides that upon recommendation by the State Court Administrator, the supreme court may temporarily transfer trial judges to another court so long as a judge is not transferred more than forty miles from his or her county seat. This enabling legislation had remained virtually unused since it was authorized by the general assembly in 1975. However, recently the supreme court has taken action under it by creating trial court districts. The supreme court again used the statute, and the districts it created thereunder, to amend Indiana Trial Rule 79, providing that the trial courts in each district were to create their own rules for the selection of special judges.²⁴⁴ As a result, for the first time, trial judges were required to cooperate and work together in allocating their workload, albeit only in the limited occasions when the parties requested a special judge.

CONCLUSION

Having failed to secure legislative endorsement of a single-tier trial court system, proponents of unification, including the judiciary, might well be served to look internally to the supreme court for a more aggressive utilization of the "transfer and districting statute."²⁴⁵ In essence, the general assembly, while demonstrating a reluctance to embrace the single-tier trial court system, has given

239. 1 INDIANA JUDGES ASS'N, *supra* note 2, at v.

240. 1 *id.* at 15-17.

241. IND. CODE §§ 33-1-15-1 to -8 (1993).

242. FINAL REPORT OF THE COMMISSION ON TRIAL COURTS, *supra* note 199, at 3.

243. IND. CODE § 33-2.1-7-8 (1993).

244. IND. TR. R. 79.

245. IND. CODE § 33.2.1-7-8 (1993).

the supreme court the power to organize the state into administrative districts, transfer judges from one court to another within those administrative districts, and thus, allocate the judicial resources of the state to meet the present and future demands. Despite the fact that the allocation of judicial resources has traditionally been left to the general assembly, it has recognized the role and ability of the judiciary in that area. Although the supreme court was initially reluctant to make changes in the allocation of judicial resources, it now seems prepared to do so. Therefore, reformers should look to the supreme court for advancing more aggressive changes.

Regarding judicial selection, the general assembly's ambivalence toward the selection process for judges has manifested itself in a hybrid method which provides for merit selection of the appellate and supreme court judges and partisan election for most trial judges. Only the general assembly can remedy this dichotomy. However, urging from bar associations and judges' groups has been inadequate to move the general assembly toward further acceptance of merit selection for more trial judges.

As Professor Leflar predicted in 1960, it will take the efforts of organizations beyond the legal community to bring about a change in the selection process for trial court judges.²⁴⁶ Leflar's prediction is correct in that reform efforts dating back to Pound in 1940 through the more recent proposals of the American Judicature Society and the American Bar Association have not been enough to move the general assembly to adopt changes. Unless more pressure is placed on the legislature from those in non-legal communities, the present hybrid of trial court organization and selection systems will remain.

246. Leflar, *supra* note 226.